



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| | | | | |
|--------------------------------------|-------------|----------------------|---------------------|------------------|
| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/520,379 | 09/15/2005 | John R McCart | XM-1004US | 2680 |
| 21302 | 7590 | 09/13/2007 | EXAMINER | |
| KNOBLE, YOSHIDA & DUNLEAVY | | | CHANG, AUDREY Y | |
| EIGHT PENN CENTER | | | ART UNIT | PAPER NUMBER |
| SUITE 1350, 1628 JOHN F KENNEDY BLVD | | | 2872 | |
| PHILADELPHIA, PA 19103 | | | MAIL DATE | DELIVERY MODE |
| | | | 09/13/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

| | |
|-----------------|------------------|
| Application No. | MCCART ET AL. |
| Examiner | Art Unit 2872 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 January 2005 and 15 September 2005.
2a) This action is FINAL. 2b) This action is non-final.
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-18 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. _____.
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/6/2005. 5) Notice of Informal Patent Application
6) Other: _____.

DETAILED ACTION

Remark

- This Office Action is in response to applicant's preliminary amendments filed on January 3, 2005 and September 15, 2005, which have been entered into the file.
- By these amendments, the applicant has amended claims 6, 9-10, 12-13 and has newly added claims 14-18.
- Claims 1-18 remain pending in this application.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-6, 9, and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by the patent issued to Sullivan et al (PN. 5,517,355).**

Sullivan teaches a *card* (5, Figure 1) that is adapted for use in a *stereoscope*, (please see Figure 1), to provide a three-dimensional image. Sullivan et al teaches that the card comprises *two* registered *stereoscopically complementary images* (images 42/43 or 49/50 in Figures 3 and 4), that are positioned *back-to-back* relative to one another in the stereoscope for viewing, (please see Figure 1). The stereoscope comprises *two sets of reflective surfaces* (10 and 11 for the left eye image and 13 and 14 for the right eye image, of the stereoscopically complementary images, as shown in Figure 1) such that the three-dimensional image produced from the two stereoscopically complementary image would not be a mirror images of the two complementary images. The stereoscopically complementary images are

affixed to the card, (please see column 3 line 20 to column 4 line 5). The card with the images certainly includes portion on the surface that allows manipulation by application of color.

With regard to claim 2, Sullivan et al teaches that the stereoscopically complementary images (42 and 43, Figure 3) could be on front and back sides or surfaces of the card.

With regard to claims 3-6 and 14-15, Sullivan et al teaches that the stereoscopically complementary images (49 and 50, Figure 4) could be attached to the *same side* of the card with a *fold* line (48) defined in between. The two stereoscopically complementary images are positioned side-by-side on the surface of the card and the images are positioned one above the other when the card is in an unfolded configuration.

With regard to claim 9, the stereoscopically complementary images may also include textual matter (44 in Figure 3 and 51 in Figure 4).

With regard to claim 13, it is implicitly true that the card is part of the stereoscopic viewing kit including the stereoscope, (please see Figures 3 and 4).

This reference has therefore anticipated the claims.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 7, 8, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the patent issued to Sullivan et al.**

The card adapted for use in stereoscope taught by Sullivan et al as described for claim 1 above has met all the limitations of the claims.

With regard to claims 7, 8 and 16-18, Sullivan et al teaches the card is affixed with a pair of stereoscopically complementary images. A plurality of cards can be housed, (please see column 5, lines 61-65). However this reference does not teach explicitly that have at least two pairs of stereoscopically complementary images on the surface of the card and to have two or more folding lines on the card. But such modifications have to be obvious to one skilled in the art by repeating the working parts for the benefit of allowing more sets of three-dimensional images be viewed. It has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art. (St. Regis Paper Co. V. Bemis Co., 193 USPQ 8).

5. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the patent issued to Sullivan et al in view of the patent issued to Whalen-Shaw (PN. 5,654,050).

The card adapted for use in stereoscope taught by Sullivan et al as described for claim 1 above has met all the limitations of the claims.

With regard to claims 10 and 11, Sullivan et al teaches that the card may be a trading card, (please see column 3, line 66). This reference however does not teach that the image may be manipulated by applying color and the card has a wipe-away surface. It would have been obvious to one skilled in the art to apply color to manipulate the image for the benefit of adding more decorative features or color effects to the card. Furthermore, **Whalen-Shaw** in the same field of endeavor teaches that a trading card can be made by laminating a plastic film onto a paper base, (please see column 1, lines 16-18). It would have been obvious to one skilled in the art to apply the teachings of **Whalen-Shaw** to make the card by laminating a plastic film onto a paper base for the benefit to provide protection over the paper base card

and to allow the surface of the card be a wipe-away surface to allow easy add-on and wipe-away image features.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the patent issued to Sullivan et al in view of the patent issued to Nichols (PN. 2,683,391).

The card adapted for use in stereoscope taught by Sullivan et al as described for claim 1 above has met all the limitations of the claims.

With regard to claim 12, Sullivan et al teaches that means may be provided to store a plurality of the cards, (please see column 5, lines 62-65). However it does not teach explicitly that the cards are stored in a book. Nichols in the same field of endeavor teaches that the stereoscopically complementary images card may be stored in a book. It would have been obvious to one skilled in the art to apply the teachings of Nichols to make the plurality of cards be stored in a book for easy storage and carrying.

Double Patenting

7. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

8. Applicant is advised that should claims 5 and 6 be found allowable, claims 14-15 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Audrey Y. Chang whose telephone number is 571-272-2309. The examiner can normally be reached on Monday-Friday (8:00-4:30), alternative Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephone B. Allen can be reached on 571-272-2434. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Audrey Y. Chang, Ph.D.
Primary Examiner
Art Unit 2872*

A. Chang, Ph.D.